

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

AIG PROPERTY CASUALTY COMPANY,

Plaintiff,

v.

LEE ROSENTHAL and RYAN DENVER,

Defendants.

CIVIL ACTION NO. 1:22-cv-11401

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**LOCAL RULE 16.1 JOINT STATEMENT**

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Pursuant to Local Rule 16.1(d), the parties Plaintiff AIG Property Casualty Company (“AIG”), Defendant Lee Rosenthal (“Rosenthal”) and Defendant Ryan Denver (“Denver”) submit the following joint statement:

**I. PROPOSED PRETRIAL SCHEDULE AND DISCOVERY PLAN**

Pursuant to Local Rule 16.1(b), the parties have conferred and are unable to reach an agreement regarding a proposed pretrial schedule. The Plaintiff AIG and the Defendant Rosenthal propose the following pretrial schedule:

1. Initial Disclosures pursuant to Fed. R. Civ. P. 26(a)(1) must be completed by January 6, 2023.
2. AIG and Rosenthal do not anticipate the need for any fact discovery in this matter. AIG plans to file a Motion for Summary Judgment after service of its initial disclosures, which will consist of the same materials that were attached to AIG’s Complaint. Defendant Denver believes that discovery is necessary. See discussion below.
3. A status conference will be held on a date set by the Court.
4. AIG and Rosenthal do not anticipate the need for expert witnesses in this matter. Defendant Denver believes that dates for expert discovery should be established, should expert testimony be required.

**6A. Case Event Schedule (Proposed by AIG and Rosenthal):**

## Dispositive Motions:

- a.** Dispositive Motions, such as Motions for Summary Judgment or partial Motions for Summary Judgment and Motions for Judgment on the Pleadings, must be filed by March 1, 2023.
- b.** Oppositions to dispositive motions must be filed within 21 days after the filing of the motion.
- c.** Replies to dispositive motions must be filed within 14 days after the filing of the opposition.
- d.** Discovery may be needed if the matter is not resolved at the summary judgment stage. The parties reserve the right to amend the scheduling order accordingly as needed.

<b><u>Event</u></b>	<b><u>Deadline</u></b>
Service of Rule 26 Initial Disclosures:	01/06/2023
Deadline to serve written discovery requests: (With exception of requests served under Fed. R. Civ. P. 36).	N/A
Deadline to complete all depositions:	N/A
Close of fact discovery:	N/A
Dispositive motions to be filed no later than:	03/01/2023
Oppositions and Cross-Motions to dispositive motions filed no later than:	03/22/2023
Cross-Motion Oppositions/Replies to dispositive motions:	04/12/2023
Replies/Sur-replies to dispositive motions filed no later than:	04/19/2023
Trial (if necessary):	June or August of 2023

**6B. Discovery and Case Event Schedule Proposed by Defendant Denver :**

1. Denver believes that discovery is required in this action, including, but not limited to:
  - a. Discovery relating to the correct interpretation, meaning and application of the provisions of the policy issued by AIG (the “Policy”) relating to Examinations Under Oath (“EUO”);
  - b. Discovery relating to AIG’s contentions that it may disclaim permanently its duty to indemnify Rosenthal for the injuries suffered by the persons injured after Rosenthal left the scene of the July 17, 2022 accident:
    - i. Due to Rosenthal’s refusal, to date, to submit to an Examination Under Oath;
    - ii. As a result of an alleged intentional, malicious or intentional act by Rosenthal which is alleged to have caused the injuries complained of;
    - iii. Due to the Policy’s Watercraft Exclusion; or
    - iv. For other reasons.
  - c. Whether AIG has sought, or obtained, by means other than an EUO, the facts it requires to determine coverage for Denver’s claims and to defend Rosenthal re: same;
  - d. Whether AIG has been prejudiced by Rosenthal’s refusal, to date, to submit to an EUO; and
  - e. Whether prejudice to AIG would continue to exist should Rosenthal submit to an EUO, e.g., after the Court rules as to whether Rosenthal is required by the Policy to submit to an EUO.

**Case Event Schedule (proposed by Denver).**

<b><u>Event</u></b>	<b><u>Deadline</u></b>
Service of Rule 26 Initial Disclosures:	01/26/2023
Deadline to serve written discovery requests: (With exception of requests served under Fed. R. Civ. P. 36).	01/13/2023
Deadline to complete all depositions:	03/17/2023

Expert Disclosures (if any):	04/07/2023
Rebuttal Expert Disclosures (if any):	04/28/2023
Expert Depositions (if any) completed:	05/22/2023
Close of fact discovery:	05/22/2023
Dispositive or partially dispositive motions filed:	06/19/2023
Oppositions/cross motions to dispositive/partially dispositive motions filed:	07/17/2023
Replies to dispositive /partially dispositive motions/cross motions:.	08/07/2023.
Trial (if necessary):	Fall 2023

**II. CERTIFICATION UNDER LOCAL RULE 16.1(D)(3)**

The Parties will file their certification pursuant to Local Rule 16.1(D)(3) under separate cover.

**III. CONDUCT OF TRIAL**

Pursuant to Local Rule 16.1(b)(3), fewer than all parties consent to having this matter tried by a magistrate judge.

**IV. SETTLEMENT**

Pursuant to Local Rule 16.1(c), the parties have conferred on the subject of settlement, at this time, neither party is prepared to accept the other party's settlement proposal.

V. **OTHER ISSUES**

Defendant Denver has asserted as an affirmative defense the failure of AIG to include an indispensable party – to wit the Estate of Janica Julce, a young woman who died after Rosenthal left the scene of the July 17, 2022 accident. The Estate’s interests will be prejudiced if the relief sought by AIG is granted. One would think that AIG would wish to include the Estate as a party to this action, so that any result herein will be binding upon the Estate. In any event, Defendant Denver suggests that the Court should order AIG to amend its Complaint herein to include the Estate as a party defendant. AIG disagrees and asserts that the Estate is not a required party under Fed. R. Civ. P. 19 as the Estate’s interests are virtually identical to Rosenthal and Denver and therefore its interests are adequately protected by Rosenthal and Denver.

AIG PROPERTY CASUALTY COMPANY      LEE ROSENTHAL

By its attorneys,

By his attorneys

/s/ Lincoln A. Rose

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Dated: December 6, 2022

**CERTIFICATE OF SERVICE**

I, Lincoln A. Rose, hereby certify that I have, on December 6, 2022 served a copy of the foregoing document, by causing a copy thereof, to be sent electronically, through the ECF system, to the registered participants in this case, as identified on the Notice of Electronic Filing (NEF). Participants in this case not registered on the ECF system, if any, will receive service through regular first-class mail.

/s/ Lincoln A. Rose

Lincoln A. Rose